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Supreme Court, U.S.
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No. 97-1241

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

LINDA CRAWFORD,
Petitioner,
v.
ANDREW SYSTEMS, INC.,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals for the Eleventh Circuit

Brief In Opposition To Petition For A Writ Of Certiorari

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QUESTION PRESENTED

Was the party who prevailed at trial in the district court, through the entry of judgment as a matter of law, *sua sponte* by the district court without the party having filed any post-trial motions, entitled to file a motion for new trial when the Court of Appeals reversed the district court's judgment based on the fact that the Federal Rules of Civil Procedure do not permit the entry of a judgment as a matter of law *sua sponte* by the district court?

STATEMENT OF CORPORATE AFFILIATION

Pursuant to Rule 29.6, the Respondent, Andrew Systems, Inc., hereby notifies the Court of the following parent or subsidiary corporations affiliated with the Respondent:

Andrew Corporation, parent corporation of the wholly owned subsidiary, Andrew Systems, Inc.

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STATEMENT OF FACTS

The issues presented to this Court by the Petitioner, Linda Crawford, arise from the extremely unusual procedural history of the case. Crawford, as administratrix of the estates of Lois Vivian Parker Kelley and James Wayne Kelley, sought punitive damages from Andrew Systems for the deaths of the Kelleys,[1] who were killed in a traffic accident involving a trailer owned by Andrew Systems. Crawford filed this action in the Circuit Court of Jefferson County, Alabama, and Andrew Systems removed the case to the District Court for the Northern District of Alabama, Chief Judge Sam C. Pointer Jr. presiding.

On motion by Andrew Systems, Judge Pointer severed Crawford's negligent entrustment claim from her claims based on negligence and *respondeat superior*, and ordered a bifurcated trial.[2] In the first phase of the trial,

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[1]The Supreme Court of Alabama has interpreted Alabama's version of Lord Campbell's Act to prohibit the award of compensatory damages in wrongful death cases, and to provide punitive damages as the sole remedy in such cases, without regard for the guideposts set forth by this Court in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

[2]Alabama law allows a plaintiff to introduce certain evidence in a negligent entrustment case that would be impermissible in a straight negligence action. *See, e.g., Bruck v. Jim Walter Corp.*, 470 So. 2d 1141 (Ala. 1985); *Wilder v. DiPiazza*, 481 So. 2d 1091 (Ala. 1985).

which involved the negligence and *respondeat superior* claims, the jury awarded each estate $2.25 million in punitive damages. In the second phase of the trial, involving solely Crawford's claim of negligent entrustment, the jury awarded each estate an additional $1.75 million, or a total of $8 million to Crawford as administratrix of the estates.

On January 14, 1994, Judge Pointer entered judgment against Andrew Systems for $4.6 million based on the negligence and *respondeat superior* claims.[3] However, by separate opinion, Judge Pointer held that the plaintiffs had failed to present sufficient evidence of their negligent entrustment claims. Judge Pointer therefore entered judgment as a matter of law, *sua sponte*, in favor of Andrew Systems as to the negligent entrustment claims.

Crawford filed a notice of appeal from this order on the very day Judge Pointer issued it, January 14, 1994. Andrew Systems did not appeal or cross-appeal, and filed no post-verdict motions because it accepted the $4.6 million judgment against it. Andrew Systems paid that sum, plus $12,407.71 in interest, to the Financial Section of the district court in full satisfaction of the judgment.

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[3]In its first verdict, the jury had also awarded $100,000 in compensatory damages to Cynthia Lucas, mother and next friend of Jonathan Lucas, a minor who was injured in the accident. Notably, the jury did not award any punitive damages to Lucas and did not award Lucas *any* damages in the second phase of the trial. Lucas did not participate in the appeal of the case and is not a party before this Court.

The plaintiffs withdrew the funds from the district court clerk's office in satisfaction of the judgment on April 20, 1994.

On that first appeal to the Eleventh Circuit, *Crawford v. Andrew Systems*, 39 F.3d 1151 (11th Cir. 1994), the Court of Appeals held, based on an interpretation of federal common law, that the withdrawal of funds did not moot Crawford's appeal. The court then reversed the judgment of the district court as to the negligent entrustment claim, on the ground that the district court could not act *sua sponte* to grant a post-verdict judgment as a matter of law. The Court of Appeals remanded the case for further proceedings consistent with its opinion. The Court of Appeals denied Andrew Systems' application for rehearing and suggestion for rehearing en banc.

Andrew Systems then filed a motion in the district court for remittitur or a new trial on the negligent entrustment claim, on the grounds that the verdict was against the great weight of the evidence. Judge Pointer initially denied these motions because they were filed prior to the issuance of the Eleventh Circuit's mandate. Once the mandate was issued, Judge Pointer entered a new judgment in favor of Crawford on the negligent entrustment claims on March 29, 1995. Andrew Systems renewed its motion for remittitur or new trial on March 31, 1995. After a hearing on April 11, 1995, Judge Pointer denied the motion for remittitur, but granted the motion for a new trial on the negligent entrustment claim. In his Order, the Judge noted:

> [U]ntil March 29, 1995, when judgment on Plaintiff's negligent entrustment claim was entered on remand, no judgment existed that was adverse to Defendant's interests for which a Motion for a New Trial would possibly lie. Moreover, as Plaintiff noticed her appeal on January 14, 1994, Defendant, as a practical matter, had no time to file any post-trial motions, much less ten days, because this court was stripped of its jurisdiction over the case immediately upon entry of judgment.

(Appendix to Petition, pp. 30a-31a.)

Crawford sought to set aside this order by petitioning the Eleventh Circuit for a Writ of Mandamus, but the Court of Appeals denied the petition. In its opinion, the same panel that had just reversed the judgment against Crawford stated, "Moreover, it is not clear that any judgment had been entered which Andrew desired to challenge." (*See* Appendix to Petition, p. 32a.) Andrew Systems then filed a motion for summary judgment, which the trial court granted on October 6, 1995.

On her second appeal to the Eleventh Circuit, Crawford continued to argue that Andrew Systems should have been barred from filing a motion for new trial following the remand and entry of the new judgment. A second panel of the Court of Appeals once again noted that Andrew Systems had accepted the initial judgment by paying the entire judgment amount, and that it had therefore had no reason to file any post-trial motions

following the January 14, 1994 judgment. The Court of Appeals further held that because the first *valid* judgment was not entered until March 29, 1995, the 10-day period for filing a motion for new trial under Rule 59(b) ran from that date. Because Andrew Systems filed on March 31, 1995, two days after the entry of the second judgment, the court found that the motion was timely under Rule 59(b). The Court further noted that, "until the March 29, 1995, judgment was entered, no judgment existed that was adverse to Andrew Systems' interests. Thus, as a practical matter, there was no reason for Andrew Systems to file a motion for new trial until the judgment was entered on remand." *Crawford v. Andrew Systems, Inc.*, 119 F.3d 925, 927 n.2 (11th Cir. 1997).

ARGUMENT

I. THIS CASE PRESENTS NO COMPELLING ISSUE MERITING THE ATTENTION OF THE COURT.

The Court has long made it clear that the docket of the United States Supreme Court is reserved for cases of important national interest and that the Court's discretion to grant a petition for a writ of certiorari is to be exercised in very limited circumstances. *See, e.g., Fields v. United States*, 205 U.S. 292 (1907) (certiorari to review a judgment of a court of appeals will not be granted where such case, however important it may be to the petitioner, does not involve a question of gravity and general importance); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) (certiorari jurisdiction is "to

be exercised sparingly, and only in cases of peculiar gravity and general importance").

Rule 10 of the Supreme Court Rules states, "A petition for a writ of certiorari will be granted only for compelling reasons," and Rule 10(a) summarizes those limited compelling circumstances in which the Court might grant a petition as those when

> a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power[.]

The single case in which a court of appeals made a similar ruling involving similar facts was *Riske v. Truck Insurance Exchange*, 490 F.2d 1079 (8th Cir. 1974), and that case is on all fours with the holding of the Eleventh Circuit in this case. Petitioner has failed to show that this case has particular national importance, and there is no compelling reason for the Court to agree to hear this case. None of the factors listed in Rule 10(a) applies in this case. Even assuming, *arguendo*, that her arguments and rendition of the facts were correct (an assumption Andrew Systems strongly contests, see Arguments II and III below), the most Crawford could show would be that the

Rules of Civil Procedure had been incorrectly applied to the unique facts of this case.

Crawford alleges that the legal issues presented to this court all arose from an alleged procedural error committed by the district court: the *sua sponte* granting of judgment as a matter of law to Andrew Systems following the trial. However, that procedural error was corrected when the Court of Appeals reversed that judgment. The Court of Appeals determined that the district court did not have the authority under Fed. R. Civ. P. 50 to *sua sponte* enter judgment as a matter of law, and remanded the action to the district court.

The entire basis for Crawford's petition flows from this unusual procedural history. The limited importance of this case is shown by the fact that Crawford has not demonstrated, and cannot demonstrate, that this alleged error is common, or that it has generated the same legal issues presented by Crawford, or even that it would ever reoccur. Crawford has presented the Court with no case in conflict with the decision below, nor one involving the same facts and the same legal issue.

This Court does not, and should not, accept cases merely to correct alleged procedural errors committed by district courts or courts of appeal. As Rule 10 states, "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." The alleged "issue" in this case arises from an extremely unusual procedural situation and, at most, involves a misapplication of the Federal Rules of Civil Procedure to

those unusual facts. This case is not suitable for review by this Court.

II. CRAWFORDS'S ARGUMENTS ARE BASED ON A MISCHARACTERIZATION OF THE OPINION BELOW.

Crawford repeatedly states throughout her Petition that the Court of Appeals "held" that the judgment of the district court entered on January 14, 1994, granting judgment as a matter of law to Andrew Systems, was "void." (Petition, pp. 5, 6, 7, 8, 14, 15, 16, 17, 18, 20.) Crawford then constructs a lengthy chain of arguments based on the premise that this "holding" regarding "void" judgments was incorrect and that it is in conflict with decisions of other courts. (Petition, pp. 8-16.)

The problem is that the Court of Appeals never held that the district court's judgment was "void." Crawford incorrectly attributes this holding to the Court of Appeals, even using quotation marks, but the fact is that the court simply did not reach such a conclusion. Crawford has taken the word "void" out of context by attributing to the Court of Appeals a reference made by that court in rejecting a broader argument presented by Crawford.

Specifically, the only mention of the term "void" in either of the decisions of the Court of Appeals may be found in one sentence of its second decision:

> Appellants argue that the Appellee's motion for a new trial was time barred under

> Rule 59(b). They maintain that the pre-appeal judgment of the district court was not void, and, even if it were, time runs from all judgments, whether void or not. We find this argument unpersuasive.

Crawford v. Andrew Systems, Inc, 119 F.3d 925, 926 (11th Cir. 1997) [hereinafter "*Crawford II*"].

The Court of Appeals was clearly responding to Crawford's argument and was merely stating that it disagreed with Crawford's argument that the time for filing a motion for new trial under Fed. R. Civ. P. 59(a) runs for *all* parties from *any* judgment, whether favorable or adverse. The term "void" does not appear anywhere else in any of the opinions below. In all other references to the district court's ruling, the Court of Appeals uses terms such as "unauthorized," "valid," *id.* at 926, 927, or "improperly granted." *Crawford v. Andrew Systems, Inc.*, 39 F.3d 1151, 1151 (11th Cir. 1994) [hereinafter "*Crawford I*"]. As Crawford has taken great pains to point out, there are significant distinctions between a "void" judgment and an "invalid," "improper," or "voidable" judgment. *E.g.*, *Hoult v. Hoult*, 57 F.3d 1, 6 (1st Cir. 1995) (a judgment is void only if the court lacked jurisdiction or where court's action amounts to a plain usurpation of power constituting a violation of due process).

Therefore, Crawford's main argument is based on the false premise that the Court of Appeals held the January 14, 1994 judgment to be "void" when there was in fact no such "holding." (*See* Petition, pp. 5-16.) Even if this Court were to accept Crawford's theory that the Court

of Appeals believed the district court's initial judgment to be "void," such an implication is too slender a reed upon which to base the grant of a writ of certiorari.

The Court should not accept a case on writ of certiorari when the issues are based on a petitioner's creative interpretations of the plain and clear language of the Court of Appeals. Crawford attempts to fabricate an issue out of an alleged conflict between the circuits on the issue of what constitutes a "void" judgment, when the Court of Appeals never even addressed that issue in its opinion. There was no such holding, and the decision below did not rest on any determination that the district court's judgment was "void." There can be no plainer reason to deny the Petition in this case.

III. THE DECISION OF THE COURT OF APPEALS WAS CORRECT AND IN CONFORMITY WITH THOSE OF OTHER FEDERAL COURTS.

The Court of Appeals reached the reasonable conclusion in this case that Andrew Systems was entitled to file a motion for new trial within 10 days of the entry of judgment on remand. Andrew Systems had obtained a favorable judgment in the district court, but the Court of Appeals had vacated that judgment on procedural grounds because the district court was without authority to enter judgment as a matter of law *sua sponte*. Therefore, as the Court of Appeals stated in *Crawford II*, there was no judgment adverse to Andrew Systems when the first judgment was entered, and thus, "as a practical matter, there was no reason for Andrew Systems to file a motion

for new trial" or otherwise contest the judgment at that time. 119 F.3d at 927 n.2.

Only when the district court entered the second judgment on March 29, 1995, in compliance with the mandate of the Court of Appeals following *Crawford I*, did any judgment exist that Andrew Systems found objectionable. Moreover, because Crawford had filed her notice of appeal on the very same day that Judge Pointer entered the judgment of January 14, 1994, Andrew Systems never had any opportunity to file any post-trial motions. By removing jurisdiction from the district court to the Court of Appeals on that date, Crawford herself prevented Andrew Systems from filing any such motion in the district court.

If the Court were to accept Crawford's argument, it would create unimaginable burdens on the district courts. She is asking the Court to require that *all* parties—including parties who have prevailed at trial—file motions for post-trial relief within 10 days following the entry of any judgment, simply on the off-chance that the judgment *might* be reversed or modified on appeal and that the action *might* be remanded to the district court for further proceedings that *might* result in some adverse judgment that *might* require some type of post-trial relief at that time. Under Crawford's scenario, a party would have to anticipate reversal by the court of appeals in order to preserve his or her rights to *ever* request post-trial relief. Not surprisingly, no court has ever supported Crawford's argument.

There is no conflict over this; the Eighth Circuit Court of Appeals made a similar ruling in *Riske v. Truck Insurance Exchange*. The defendant, Truck Insurance Exchange, had prevailed at trial when the district court entered a judgment as a matter of law for Truck following the jury verdict in favor of Riske. The Eighth Circuit explicitly held that Truck would be permitted to seek a new trial when the district court entered a judgment reinstating the jury verdict. The court stated:

> Entry of judgment on the jury verdict pursuant to Fed.R.Civ.P. 58 starts the ten-day period permitted for filing a motion for new trial. Fed.R.Civ.P. 59(b). Since Truck was entitled to ten days from the entry of the Riske judgment to file a new trial motion, and since no judgment on the verdict was entered when the district court acted favorably to Truck, we believe that Truck is not now foreclosed from filing a motion for new trial. Accordingly, we specify that upon entry of judgment in favor of the Riskes pursuant to our mandate, Truck shall have ten days in which to file a motion for new trial.

Id. at 1088 n.2.

Crawford's argument also conflicts with accepted general principles concerning successive judgments and with the rule that a prevailing party need not appeal to preserve issues that were decided favorably to that party. This Court and the federal courts of appeal have long held

that, in determining when a judgment is entered for Rule 59(b) purposes, a second judgment prevails over a first judgment and begins the running of the 10-day limitation, if it is a superseding judgment making a change of substance with "disturbed or revised legal rights and obligations." *Federal Trade Commission v. Minneapolis-Honeywell Regulator Co.*, 344 U.S. 206, 211-12 (1952); *see also Federal Power Commission v. Idaho Power Co.*, 344 U.S. 17, 19-22 (1952); *Zimmern v. United States*, 298 U.S. 167 (1936); *Cornist v. Richland Parish School Board*, 479 F.2d 37 (5th Cir. 1973).

The federal courts have uniformly recognized that a prevailing party need not file an appeal or cross-appeal unless it seeks to *alter* a judgment in its favor. *Northwest Airlines, Inc. v. County of Kent, Michigan*, 510 U.S. 355 (1994). A party that prevailed in the district court may advance all the arguments it presented to the district court in support of the judgment; it need not file a cross-appeal simply because the district judge rejected one argument on the way to deciding in its favor. *Retired Chicago Police Association v. City of Chicago*, 7 F.3d 584 (7th Cir. 1993), *cert. denied*, 117 S. Ct. 305 (1996); *RTC Transportation Co. v. Conagra Poultry Co.*, 971 F.2d 368 (9th Cir. 1992).

Crawford contends that Fed. R. Civ. P. 50(c) requires all litigants, including prevailing parties, to file motions for new trial within 10 days of entry of judgment or waive forever any right to contest future judgments in the case. (Petition, p 24.) Clearly, the Rules of Civil Procedure do not require such a senseless and unavailing course of action. In fact, such a requirement would potentially violate Fed. R. Civ. P. 1, which requires that

the Rules "shall be construed and administered to secure the just, speedy and inexpensive determination of every action."

In fact, Fed. R. Civ. P. 50(c) states only that, if a party submits a renewed motion for judgment following the jury verdict, and if it requests a new trial in the alternative, the district court should rule on both. The Rule does not address whether a party that prevailed without submitting a renewed motion for judgment has an obligation to file a motion for new trial at the same time.

Moreover, the cases cited by Crawford construing Fed. R. Civ. P. 50 are inapposite and easily distinguishable. For example, *Arenson v. Southern University Law Center*, 43 F.3d 194 (5th Cir. 1995), which Crawford describes as a "decision[] contrary to that taken by the Eleventh Circuit in this case" (Petition, p. 24), involved a case in which a jury verdict in favor of a professor in a race discrimination suit was set aside by the district court on motion by the defendants. The district court, in direct contravention of the requirements of Rule 50(c), failed to rule on the defendants' alternative motion for new trial. The court of appeals reversed the district court's ruling and reinstated the jury verdict, and then subsequently held that the defendants were not entitled to refile a motion for new trial.

The court's decision in *Arenson* rested on the failure of the defendants to ensure that the district court followed the procedure mandated by Rule 50(c), which is not at issue in the present case. There, the defendants had abandoned their motion for new trial by failing to meet

their duty to obtain a ruling on the motion at the prescribed time. *Id.* at 196-97. The *Arenson* court specifically contrasted the situation in *Arenson* with the facts in *Conway v. Chemical Leaman Tank Lines, Inc.*, 644 F.2d 1059 (5th Cir. 1981). There, the court had found that the defendants were not barred from bringing a motion for new trial on a particular issue after remand when the court of appeals had reversed the district court's grant of the defendants' prior motion for new trial on other grounds.

The issue in *Conway*, as in the present case, was "resolved by the general rule that a party need not raise in this court on cross-appeal alternative grounds to support a favorable judgment." *Arenson*, 43 F.3d at 197. The *Arenson* court found that the distinguishing feature between the *Arenson* and *Conway* cases was the fact that the *Arenson* defendants had specifically failed to comply with Fed. R. Civ. P. 50(c) and that the party who had filed a motion for new trial bore the burden of assuring compliance with Rule 50(c). In *Conway*, as in this case, there was no such violation of Rule 50(c). Andrew Systems had no reason to file any post-judgment motions, because it had paid the judgment against it, and it bears repeating that Crawford's own act of filing the appeal immediately upon entry of the judgment effectively prevented Andrew Systems from filing any post-verdict motion, even if it had wished to do so. Therefore, *Arenson* has no relevance to the issues presented in this case.

The decisions in the other cases cited by Crawford turned on the failure of parties who had previously moved for a new trial to press for a decision on those motions prior to appeal, which is not the issue in this case. *See*

Johnstone v. American Oil Co., 7 F.3d 1217 (5th Cir. 1993) (because plaintiffs failed to obtain a ruling on their alternative motion for a new trial pursuant to procedure of Rule 50(c), and failed to raise the issue on appeal, the plaintiffs had abandoned it); *Oberman v. Dun & Bradstreet*, 507 F.2d 349 (7th Cir. 1974) (judgment for defendant notwithstanding the verdict reversed and jury verdict for plaintiff reinstated, because defendant abandoned motion for new trial when it failed to press district court for ruling as required by Rule 50(c); *Vera Cruz v. Chesapeake & Ohio R.R.*, 312 F.2d 330 (7th Cir.), *cert. denied*, 375 U.S. 813 (1963) (failure to have district court rule on alternative motion for new trial under Rule 50(b), submitted at same time as motion for judgment notwithstanding the verdict, constituted abandonment of motion for new trial).

Crawford has failed to demonstrate that the decision of the Eleventh Circuit Court of Appeals is in conflict with the decision of any other court. In fact, the decision below was eminently sensible and in accord with the Eighth Circuit's decision in *Riske*. There is no reason for the Court to grant the petition.

CONCLUSION

For the foregoing reasons, the Respondent, Andrew Systems, Inc., requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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